

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SEEMA KHAN

Plaintiff,

v.

WORLD SAVINGS BANK, FSB,

Defendant.

Case No.: 10-CV-04057-LHK

ORDER DENYING MOTION TO
SUBSTITUTE COUNSEL

This action was originally filed in the Superior Court for the County of Santa Clara on August 2, 2010. On September 9, 2010, Defendant World Savings Bank removed the action to this Court. World Savings Bank then filed a Motion to Dismiss the complaint on September 16, 2010. *See* Dkt. No. 6. This Motion was originally set for hearing on November 2, 2010 (this date was vacated when the case was reassigned). *Id.* As a result, the opposition to this motion was due on October 12, 2010. Plaintiff's counsel did not timely file an opposition to the Motion to Dismiss, or a statement of non-opposition, as required by Local Rule 7-3(b).¹ On October 28, 2010, this matter was reassigned to the undersigned per the Defendant's declination to proceed before a Magistrate Judge. On November 2, 2010, Counsel for Plaintiff in this action filed a proposed "Consent Order Granting Substitution of Attorney," attempting to substitute Plaintiff as pro se counsel. *See* Dkt.

¹ This is the second time that counsel for Plaintiffs has failed to follow the Local Rules by failing to file an opposition to a Motion to Dismiss, or a statement of non-opposition, in a case assigned to this Court. *See Jones v. PNC Bank, N.A.*, Case No. 10-cv-01077-LHK, 2010 U.S. Dist. LEXIS 92866 at *7-*8 (N.D. Cal. Aug. 20, 2010). Plaintiff's counsel is warned that repeated failure to follow the Local Rules can lead to sanctions. *See* Local Rule 1-4.

1 No. 12. On November 3, 2010, the Defendant filed an Amended Motion to Dismiss. *See* Dkt. No.
2 13.

3 If attorney for Plaintiff wishes to withdraw from this matter, he must move to withdraw
4 under Local Rule 11-5(b), and pursuant to the relevant California Rules of Professional Conduct.
5 These rules permit counsel to withdraw in cases where the client “breaches an agreement or
6 obligation to the member as to expenses or fees,” or where the client “knowingly and freely
7 assents” to withdrawal. Cal. Rules of Prof’l Conduct 3-700(C)(1)(f), (5). In all cases, however,
8 counsel must take “reasonable steps to avoid reasonably foreseeable prejudice to the rights of the
9 client, including giving due notice to the client, allowing time for employment of other counsel,
10 complying with Rule 3-700(D) [which addresses the disposition of client papers and property], and
11 complying with applicable laws and rules.” *Id.* 3-700(A)(2).

12 Plaintiff’s counsel’s attempt to substitute Plaintiff as counsel is improper, particularly in
13 light of counsel’s failure to file an opposition or a statement of non-opposition to the first Motion
14 to Dismiss. Therefore, this request is DENIED.

15 **IT IS SO ORDERED.**

16 Dated: November 3, 2010

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18 LUCY H. KOH
19 United States District Judge
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